No. 88-543

FILED
JUL 1 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1988

JEAN LEONARD HARRIS, Petitioner

vs.

DEPUTY DISTRICT ATTORNEY ANTHONY SAMSON, DEPUTY DISTRICT ATTORNEY DUANE SHINNICK, DISTRICT ATTORNEY INVESTIGATOR HAROLD WAIGHT COUNTY OF SAN DIEGO, RONALD HERPOLSHEIMER, JAMES LORENZ AND MYRON KLARFELD, Respondents

SUPPLEMENT TO

PETITION FOR WRIT OF CERTIORARI

On a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JEAN LEONARD HARRIS, Pro Se
16776 Bernardo Center Dr. Suite 110B
San Diego, California 92128
(619)485 1177

21pp

PETITIONER HAS TIMELY FILED THE PETITION FOR WRIT OF CERTIORARI

EXPLANATION

The judgment of the Ninth Circuit was filed on January 25, 1988. See Exhibit "A" herein. On February 8, 1988, Petitioner filed, with the Ninth Circuit Court of Appeals, a "petition for rehearing with suggestion for rehearing en banc". See Exhibit "A". On April 7, 1988, the Court of Appeals filed an order stating that "The suggestion for a rehearing en banc is rejected". See Exhibit "A".

On April 21, 1988, the District Court ordered the above matter to be placed on calendar, May 31, 1988, for further proceedings re attorney fees. See Exhibit "B". On May 31, 1988, Petitioner advised the District Court that he intended to file the Petition for Writ of Certiorari herein. After

Petitioner represented to the District Court that the Court of Appeals order was filed on or about April 7, 1988 and that Petitioner had 90 days from that date to file the herein Petition, and absent any objection by opposing counsel, the District Court continued the hearing to August 29, 1988, in order to allow Petitioner the 90 days to file this Petition. See Exhibit "C".

On July 1, 1988, Petitioner filed the herein Petition by placing said Petition in the United States mail. Said Petition was returned by the United States Supreme Court Clerk's Office because the petition was printed on the wrong size paper and a question regarding the timeliness of the Petition. Petitioner contacted the Clerk's Office and was advised to file an "Affidavit of Mailing" in order to make the July 1, 1988 date a timely filing date.

Petitioner reprinted the Petition and refiled together with the Affidavit. See Exhibit "D".

Thereafter, Mr. Francis J. Lorson, Chief Deputy Clerk, advised Petitioner that the order of the Court of Appeals only made reference to the "suggestion for rehearing en banc". Petitioner was advised by Mr. Lorson, first, to seek a modification of the Court of Appeals order to reflect a denial of the Petition for Rehearing. Unless there was evidence that the Court of Appeals denied the Petition for Rehearing, Mr. Lorson stated that he did not desire to speculate on the denial in order to give Petitioner the 90 days from April 7, 1988 to file the Petition with the Supreme Court.

On August 11, 1988, Petitioner filed with the Court of Appeals a request to clarify the order of April 7, 1988. Petitioner requested that the Court of

Appeals state that the Petition for Rehearing was denied. See Exhibit "E". On August 26, 1988, the Court of Appeal denied Petitioner's request to clarify the order of April 7, 1988. See Exhibit "F".

On or about September 14, 1988, Petitioner discussed the above dilemma with Mr. Lorson and was advised to file this Supplement together with the Court of Appeal docket entry indicating that the Petition was filed as a Petition for Rehearing and handled as such by the Court of Appeal.

It is Petitioner's opinion that the filing of the Petition herein was timely because:

1. The docket entry states that Petitioner filed a "Petition for Rehearing" and the document was treated as such by the Court of Appeals.

2. Rule 20.4 states that the time

for filing a petition for writ of certiorari is extended if a petition for rehearing is filed (this was done) and the time will thereafter run from the date of denial of rehearing (Court of Appeal refused to clarify this issue) or of the entry of a subsequent judgment entered on the rehearing. The judgment (exhibit "A" to Petition) shows that a subsequent judgment was entered (as a result of the April 7, 1988 order) on June 15, 1988- it was received April 21, 1988, and filed May 31, 1988.

3. The District Court and opposing counsel have treated the Petition for Rehearing as such. The District Court and opposing counsel had read the April 7, 1988 order and, on May 31, 1988, all parties and the District Court, treated the order as a denial of the Petition for Rehearing and continued the hearing date specifically to allow Petitioner to have

the 90 days from April 7, 1988, to file the herein Petition.

4. The Court of Appeal denial of Petitioner's request for rehearing, although not containing the traditional language, must, by necessary implication, deny what Petitioner filed with the Court of Appeal- it was docketed as a "Petition for Rehearing".

5. There is no prejudice to the District Court, opposing counsel and the Court of Appeal, to recognize the docket entry for what it states and treat the order as a denial of the Petition for Rehearing.

6. The Petition for Rehearing, filed on February 8, 1988, must be treated as having been denied- thereby making timely the filing of this Petition, or still pending- also making timely the filing of this Petition.

7. The Petition was filed within 90

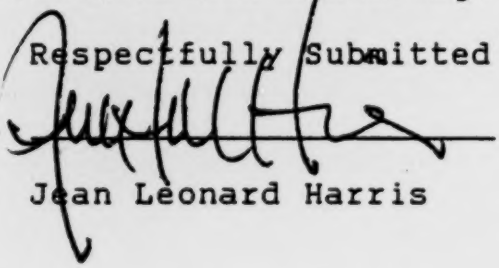
days of the last order of the Court of Appeals relevant to the docket entry of February 8, 1988. That entry states a "Petition for Rehearing" was filed. If the April 7, 1988, order has now been determined to be the Court's last word on the subject, that order also denies the document filed on February 8, 1988- the Petition for Rehearing.

8. Had the District Court and opposing counsel not acquiesced in Petitioner's right to file the Petition herein within 90 days of the April 7, 1988 order, Petitioner would have had the right to Petition the Supreme Court under Rule 20.6 for an extension of time to file. The order of the Court of Appeal was received by Petitioner on or about April 15, 1988- merely 10 days before the expiration of 90 days from date of original judgment.

For all of the above reasons,

Petitioner submits that the Petition herein filed was timely as filed within 90 days of the last order on a matter docketed as a Petition for Rehearing.

Respectfully Submitted



Jean Leonard Harris

EXHIBIT A

THIS EXHIBIT CONTAINS ENTRIES RELEVANT

TO THE REHEARING OF JUDGMENT

GENERAL DOCKET FOR

Ninth Circuit Court of Appeals
Court of Appeals Docket #86-6570 CIVATT
CLOSED Filed: 11/6/86
Harris v Dpty Dist.Attorney, et al
Appeal from: U.S. District Court for the Southern District of California

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Case type information:
1) civil
2) private
3)

Lower court information:
District:0974-3:CV-84-0767-T
presiding judge: Howard B. Turrentine, Senior Judge
Date filed: 3/28/86
Date order/judgment:10/27/86
Date NOA filed:10/27/86

Fee status:paid

Prior cases:
none
Current cases:
none

Docket as of September 14, 1988 9:32am
Page 1

Proceedings include all events. CIVATT
CLOSED

86-6570 Harris v Dpty Dist.Attorney,et al

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1/25/88 FILED MEMORANDUM OPINION (WALLACE, NORRIS, author THOMPSON),AFFIRMED FILED AND ENTERED JUDGMENT [86-6570] ec [Entry date 1/27/88]

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2/8/88 [487724]Filed original and 40 copies Appellant Jean Leonard Harris petition for rehearing with suggestion for rehearing en banc 12 pages, served on 2/5/88 (Panel and All Active Judges) [86-6570] (rc)

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Proceedings include all events. CIVATT
86-6570 Harris v Dpty Dist.Attorney,etal
CLOSED

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4/7/88 Filed order (WALLACE, NORRIS, THOMPSON) The suggestion for a rehearing en banc is rejected. [487724-1][86-6570] (jw) [Entry date 4/11/88]

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Proceedings include all events. CIVATT
86-6570 Harris v Dpty Dist.Attorney et al
CLOSED

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8/11/88 Received as of 8/11/88,ltr dated 8/8/88, from Jean L. Harris requesting that a clarification of the order filed 4/7/88,be made.(PANEL)served on 8/8/88 [86-6570] (rc) [Entry date 8/12/88]

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8/26/88 Filed order (WALLACE, NORRIS THOMPSON) The request of aplt Jean Leonard Harris for clarification of the court's order filed on April 7, 1988 is denied. [1084166-1] [86-6570] (jw)

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EXHIBIT B

MINUTES OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEAN LEONARD HARRIS vs DEPUTY DISTRICT ATTORNEY No. 84-0767-T

Hon. HOWARD B. TURRENTINE Ctrm Dep C. SPANDONI RcDr_____

Attorneys

Plaintiffs	Defendants
_____	_____
_____	_____

PROCEEDINGS: X In Chambers ___In Court

The Court orders the above-entitled matter placed on calendar for further proceedings re attorney fees on Tuesday, May 31, 1988, at 10:30 A.M.

Mailed copies 4/21/88 to:

Paul Pierce
Finley Kumble Wagner, etc
101 West Broadway Ste 1500
San Diego, CA 92101

Jean Leonard Harris
16776 Bernardo Center Dr., Ste 110B
San Diego, CA 92128

Gregory Post
1400 Imperial Bank Tower
701 "B" St., Ste 1400
San Diego, CA 92101-4532

Paul Bruce
1600 Pacific Hwy Rm 235
San Diego, CA 92101-2469

EXHIBIT C.

Date:4/21/88 Initials CS

MINUTES OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEAN LEONARD HARRIS vs DEPUTY DISTRICT ATTORNEY No. 84-0767-T

Hon.HOWARD B. TURRENTINE Ctrm Dep COREY SPANDONI RcDr IN CHAMBERS

Attorneys

_____ _____

_____ _____

PROCEEDINGS: X In Chambers ___In Court

The Court orders the hearing set for status regarding attorney's fees, presently set for August 29, 1988, continued to September 6, 1988 at 10:30 A.M.

Mailed copies 8/1/88 to:

Finley Kumble Wagner
101 West Broadway Ste 1500
San Diego, CA 92101

Jean Leonard Harris
16776 Bernardo Center Dr., Ste 110B
San Diego, CA 92128

Robert Friedenbuerg
Post Kirby Noonan Sweat
1400 Imperial Bank Tower
701 "B" St., Ste 1400
San Diego, CA 92101

Paul Bruce
1600 Pacific Hwy Rm 235
San Diego, CA 92101

Date:8/1/88 Initials CS

EXHIBIT D

AFFIDAVIT OF MAILING

On July 1, 1988, at about 1:00 P.M., I placed in the United States mail, first class postage prepaid, at the post office located in Rancho Mirage, California, the PETITION FOR WRIT OF CERTIORARI captioned JEAN LEONARD HARRIS, Petitioner, vs DEPUTY DISTRICT ATTORNEY ANTHONY SAMSON, et al, mailed to the Clerk of the United States Supreme Court, One First Street, NE, Washington, D.C. 20453.

The mailing of the PETITION was timely in accordance with Rule 20.4 in that the petition for rehearing was rejected on April 7, 1988, the order filed May 31, 1988 and judgment entered on June 15, 1988.

The PETITION was returned to me because the size of the paper was wrong. I received the return on July 23, 1988, and immediately reprinted the PETITION on the appropriate size paper and mailed said PETITION on July 28, 1988, first class postage prepaid to the Clerk of the United States Supreme Court, One First Street, NE, Washington, D.C. 20453.

I am a member of the State Bar of the State of California and admitted to practice before the United States Supreme Court.

I declare under penalty of perjury that the forgoing is true and correct. Executed on July 28, 1988, at Rancho Mirage, California.

_____

Jean Leonard Harris

EXHIBIT E

Jean Leonard Harris
16776 Bernardo Center Drive
Suite 110 B
San Diego, California 92128
(619) 485-1177

August 8. 1988

Clerk of the Court
United States Court of Appeals
Ninth Circuit
Seventh and Mission Streets
Post Office Box 547
San Francisco, California 94101

Re: Harris v Samson et al
No 86-6570
D.C. No CV 84-0767-Y

Dear Clerk:

I am requesting that a clarification of the Order filed on April 7, 1988 be made. I have discussed this matter with Joe Williams of your office. The Petition For Rehearing En Banc, was docketed as a Petition for Rehearing together with a suggestion for hearing en banc. However, the Order only makes reference to a rejection of the suggestion for a rehearing en banc without reference to or a denial of the Petition for Rehearing. As I understand, the order normally reads that the Petition for Rehearing is denied and the suggestion for a rehearing en banc is rejected. I ask that the Order in this matter be clarified to read accordingly.

The reason for the request is as follows. The Clerk of the Untied States Supreme Court will accept the Petition for Writ of Certiorari within 90 days of denial of the Petition for Rehearing. Without

mention within the order that the Petition for Rehearing was denied, the Clerk of the Supreme Court will not speculate as to the effect of the above order in this case. That is, the order must specifically mention that it is also a denial of the Petition for rehearing. With this clarification, the Clerk of the Supreme Court will accept for filing the Petition for Writ of Certiorari already in his possession.

Respectfully Requested,

Jean Leonard Harris /s/

cc Paul Bruce, esq.
Michael Lipman, esq.
Gregory Post, esq.

Francis J. Lorson
Chief Deputy Clerk
Supreme Court of the United States

EXHIBIT F

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
AUG 26 1988
Cathy A Catterson, Clerk
U.S. Court of Appeals

JEAN LEONARD HARRIS	
	No. 86-6570
Plaintiff,	D.C.No.CV-84-0767-T
v.	ORDER
DEPUTY DIST. ATTY. et al.	
Defendants	

Before: WALLANCE, NORRIS, AND THOMPSON, CIRCUIT JUDGES

The request of appellant Jean Leonard Harris for clarification of the Court's order filed on April 7, 1988 is DENIED.

CERTIFICATE OF SERVICE

On September 23, 1988, I served the attached documents (SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI) on the interested parties in this action, by mailing a copy to the following:

Paul N. Bruce, Esq.
Deputy County Counsel
1600 Pacific Highway, Rm 235
San Diego, California 92101-2467

Michael L. Lipman, Esq.
Lorenz, Alhadeff and Lundin
101 West Broadway, Suite 1500
San Diego, California 92101

Gregory Post, Esq.
701 B Street, Suite 1400
San Diego, California 92101

Executed this 23rd day of September 1988, at Rancho Mirage, California.

16776 Bernardo Center Drive, Suite 110B
San Diego, California 92128

Jean Leonard Harris